



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,012	01/23/2004	Wade Brown	CBOARD.001A	8951

20995 7590 01/13/2009
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
----------	--------------

1794

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

01/13/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary	Application No. 10/764,012	Applicant(s) BROWN, WADE	
	Examiner ALICIA CHEVALIER	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,7-9,28-38,40-44 and 46-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-9,28-38,40-44 and 46-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/08</u> . | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

1. Claims 1-4, 7-9, 28-38, 40-44 and 46-68 are pending in the application, claims 5, 6, 10-27, 39 and 45 have been cancelled.
2. Amendments to the claims, filed on July 7, 2008, have been entered in the above-identified application.

REJECTIONS

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

4. Claims 1-4, 7-9, 28-38, 40-44 and 46-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson et al. (U.S. Patent No. 3,830,776) in view of Weisman (U.S. Patent No. 4,439,548).

Regarding Applicant's claims 1, 2, 40, 42-47, 52-55 and 58-68, Carlson discloses a polymer composite material comprising only one polymer matrix, a foamed polyurethane (*col. 6, lines 58-62*) and about 60 to about 85 wt %, more specifically 80-85 wt%, of an inorganic particulate material based on total weight of the composite material (*col. 2, lines 43-47*). The inorganic particulate material comprising one or more of fly ash, bottom ash, particulate glass and granite tailings (*fly ash, col. 2, lines 43-47*).

Carlson fails to disclose the claimed polyurethane.

Art Unit: 1794

Weisman discloses a foamed polyurethane, where the matrix consists of a polyurethane and an optional polyisocyanurate, formed by reaction of a reaction mixture comprising one or more monomeric or oligomeric poly- or di-isocyanates, a first non-EO tipped polyol selected from the group consisting of polyether polyols and polyester polyols, the first polyol has a first hydroxyl number, and a second polyol selected from the group consisting of polyether polyols and polyester polyols, the second non-EO tipped polyol has a second hydroxyl number less than the first hydroxyl number (*col. 6, lines 27-53*). The polyurethane formed is deemed to be less rigid than a polyurethane that is formed with the second polyol, since Carlson discloses the claimed polyurethane composition. The second polyol is between about 5 wt% and about 20 wt%, more specifically about 10 wt% and about 20 wt% and most specific about 15 wt% and about 20 wt% based on the total weight of the first and second polyols being 100 wt% (*col. 6, lines 27-53*). The polyurethane foam is flexible with good load bearing characteristics (*col. 4, lines 34-37*).

Carlson and Weisman are analogous because they both disclose foamed polyurethane for insulating, cushioning and shock-absorbing articles.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Weisman's polyurethane composition as the polyurethane composition in Carlson in order to insure good load bearing characteristics.

Furthermore, the flexure strength of the composite is deemed to be at least 1929 psi, at least 2786 psi, at least 118,331 psi, at least 1319 psi, between 1319-1929 psi, and between 1319-1650 psi, since Carlson and Weisman disclosed the claimed composition.

Art Unit: 1794

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the blowing agent water content to about 0.10 wt% to about 0.40 wt%, based on the weight of the total polyol, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art in absence of showing unexpected results. MPEP 2144.05 (II).

The limitation “extruded” is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113.

Regarding Applicant’s claims 3, 4 and 41, Carlson discloses that the composition further comprises one or more inorganic fibers disposed throughout the polymer matrix (*col. 7, lines 10-21*). Carlson fails to disclose that the fibers are axially oriented fiber rovings. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to axially orient the fibers in order to improve the strength to the material. Carlson further discloses that the one or more inorganic fibers disposed in the polymer matrix are present in amount less than 10% by weight, based on the total weight of the material (*col. 7, lines 8-11*).

Regarding Applicant’s claims 7-9 and 49, Carlson discloses that the inorganic particulate material is fly ash with a particle size distribution ranging from about 0.0625 in. to below about 325 mesh and contains less than about 0.5 wt% water (*col. 2, lines 43-47*).

Art Unit: 1794

Regarding Applicant's claims 28-30, 50, 51, 56 and 57, the composite of Carlson and Weisman are deemed to be self-skinning and have a density ranging from about 20 to about 90 lb./ft³, more specifically 20 to about 60 lb./ft³, more specifically 20 to about 41 lb./ft³, and more specifically 31 to about 38 lb./ft³, since Carlson and Weisman disclose all the limitations of the instant claimed invention.

Regarding Applicant's claims 31-36, Weisman discloses that the a polyisocyanurate formed by reaction of the monomeric or oligomeric poly- or di-isocyanate with water. The monomeric or oligomeric poly- or di-isocyanate comprises a methylene diphenyl diisocyanate (MDI). The MDI is deemed to have a viscosity ranging from about 25 to about 200 cp at 25 degrees C and has an NCO content ranging from about 30% to about 35% (*col. 6, lines 37-53*).

Regarding Applicant's claims 37 and 38, Weisman discloses that the ratio of isocyanates to polyols is from about 0.5:1 to about 1.5:1 or 0.8:1 to 1.1:1 (*col. 7, lines 27-31*).

ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's Declaration by inventor Wade H. Brown filed July 7, 2008 of record has been carefully considered but are deemed unpersuasive.

Applicant's declaration is unpersuasive because it is not specify all the materials in the tested materials, specifically the polyols being tested nor does it provide an example of the polymer composite material of the combination of Carlson in view of Weisman. It is noted that Applicant's declaration would be persuasive for the tested materials only, not the wide range claimed.

Art Unit: 1794

6. Applicant's arguments in the response filed July 7, 2008 regarding the 35 U.S.C. 103(a) rejection over Carlson in view of Weisman of record have been carefully considered but are deemed unpersuasive.

Applicant argues that Weisman fails to teach "the second polyol is between about 5 wt% and about 20 wt% based on total weight of the first and second polyols being 100%."

As Applicant has already pointed out Weisman discloses that the weight of polyether triol to diol can range from about 1:8 to 6:8, which is equivalent to the second polyol, i.e. the triol, about 12.5 wt% to about 75 wt% based on total weight percent of the first and second polyols. The second polyol, i.e. the triol, has a lower hydroxyl number than the first polyol, i.e. the diol (*col. 6, lines 27-53*).

Applicant argues that Weisman fails to teach the criticality of "the second polyol is between about 5 wt% and about 20 wt% based on the total weight of the first and second polyols being 100 wt%. Applicant adds they have submitted a declaration showing the criticality.

Applicant's arguments regarding the Wade Brown declaration have already been addressed above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 1794

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Alicia Chevalier/
Primary Examiner, Art Unit 1794
10/1/08

Application/Control Number: 10/764,012

Page 8

Art Unit: 1794